

Privacy and the Use of Cost/Benefit Analysis

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Overview

- Based on article at www.ssrn.com and www.peterswire.net
- “The Market Works”
- Market failures that should be included in cost/benefit analysis
- What is typically left out of CBA
- Where to go next

“Show Us the Data”

- HHS Medical Privacy Rule
 - 100-page Regulatory Impact Assessment
- Swire/Litan Brookings book
 - Could not create good-faith \$ estimate of costs of the Directive
- Key point is the baseline:
 - Coasian analysis, who has the property right
 - If assume individual owns, then large costs from privacy invasions
 - If assume business owns, then large costs from restrictions on flow
 - High transaction costs: opt-in vs. opt-out matters

Economists and Privacy

- My experience is that graduate training in economics is a predictor of less concern about privacy issues
- Perfect competition (a good thing) has perfect information
- Possibility that economists, given their own intuitions, undervalue privacy concerns of others

“The Market Works”

- Free flow of information starting point
 - “We only use data in ways customers want. Otherwise we lose trust and spend our marketing dollars on people who don’t want our offers”
 - That is, the market works

One Market Failure

- Telemarketing
 - Assume 3 buy the offer
 - 17 don't care if they are called
 - 80 have negative utility from the call
 - (They're mad, dinner is ruined, etc.)
- The losses for 80 > gains for the 3?
- If so, telemarketer externalizes the costs, but internalizes the gain
- Possibly happens with spam, too?

Other Market Failures

- High information costs for consumers
 - Don't know how data is used
- High monitoring costs for consumers
 - Can't tell who leaked
- High bargaining costs for consumers
 - Can't negotiate for a different mix
- Externalized costs of ID Theft and mistakes
 - Consumers' lives ruined, don't even know which company leaked the data
- Data held by 3d parties – not B-C
- In short, numerous likely market failures

Other Critiques of Standard Cost/Benefit Analysis

- Short run vs. long run
 - Short run: 10% discount on a purchase
 - Long run: (almost) all data flows – the surveillance society
- Dwarfing of soft variables
 - Privacy worries are hard to quantify
- Rights don't count
 - If privacy is a human right or a property right, violations of those rights are not included in the cost/benefit analysis

Where to Go Next

- Privacy Impact Assessments for new federal IT systems now required
- What equivalent, if any, will happen in the private sector?
- How can the FTC help us along the path toward encouraging good flows and having thoughtful critique of bad flows?

Conclusion

- Flows of information are not “free”
 - Externalities and other market failures
 - ID Theft
 - Other flows that are security breaches
 - Vindication of the rights of individuals
 - Long run society we want to live in
- CBA will have to have to have more nuance and less ideology
- Some of the questions raised today